

**ADVISORY OPINION 1999-008**

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is rendered. KRS 121.135(4).

June 25, 1999

Hon. William H. May, III, Legal Counsel  
Patton-Henry for Kentucky Committee  
P.O. Box 1371  
Frankfort, Kentucky 40602

Dear Mr. May:

This is in response to your letter dated May 25, 1999, requesting an advisory opinion regarding fund raising activities by the Patton-Henry for Kentucky Committee ("the Committee") in excess of the maximum threshold qualifying amount as provided in KRS 121A.060(1). Your letter confirms the Statement of Intent by the Patton-Henry slate to accept transfers from the election campaign fund and subject itself to the contribution and expenditure limits established by KRS 121A.050(1) and KRS 121A.030, respectively.

As you correctly state, in 1995, the Registry promulgated 32 KAR 1:150E, which addressed the matters posed by your letter. However, 32 KAR 1:150E was promulgated under prior law (the Kentucky legislature amended KRS 121A.060(1) in 1996) and as an emergency regulation. Since 32 KAR 1:150E was not replaced with a permanent regulation within the statutory period, the regulation expired and is no longer in effect.

Your request addresses the following questions:

*(1) If in the 1999 General election the slate of candidates receiving the Republican nomination for Governor and Lieutenant Governor does not raise the minimum threshold qualifying amount as provided in 121A.060(1), may the Patton-Henry Committee raise and spend in excess of the maximum threshold qualifying amount as provided in KRS 121A.060(1), so long as the Committee does not raise or spend in excess of the expenditure limitation provided in KRS 121A.030(1)?*

The short answer to your question is yes, KRS 121A.060(1) does not prohibit a slate of candidates that is not eligible for transfers from the election campaign fund from exceeding the maximum threshold qualifying amount. Therefore, if no other slate of candidates in the 1999 General Election raises the minimum threshold qualifying amount, KRS 121A.060(1) does not prohibit the Patton-Henry Committee from raising and spending funds that exceed the maximum threshold amount as established

under KRS 121A.060(1), provided the Committee does not exceed the limit provided in KRS 121A.030 (1).

KRS 121A.060(1), as amended, provides in pertinent part:

No qualifying slate of candidates shall accept **qualifying contributions** in any one (1) election which in the aggregate exceed the maximum threshold qualifying amount unless a qualifying slate has been released from expenditure limitations pursuant to KRS 121A.080(4) or (5). A **qualifying slate** which discovers that it has received **qualifying contributions** in excess of the maximum threshold qualifying amount shall, **without penalty**, dispose of qualifying contributions received after the maximum threshold qualifying amount was reached by **returning the excess contributions to the contributors**. The excess contributions returned to the contributors shall not be considered as qualifying contributions and shall not be matched by transfers from the fund. (Emphasis added.)

Under the specific language of the foregoing statute, there is nothing to prohibit a slate of candidates, which has indicated its agreement to participate in the public financing program but has not yet qualified for a transfer from the election campaign fund, from receiving contributions in excess of the maximum threshold qualifying amount. As explained in KREF Advisory Opinion 1998-016 to the Patton for Governor Exploratory Committee, a slate of candidates that has otherwise qualified for the public financing program may be eligible to receive a transfer from the election campaign fund **only** when another slate raises or spends the minimum qualifying threshold amount. However, until those statutory conditions precedent are met, a participating slate is not prohibited from receiving contributions in accordance with KRS 121A.050(1) and making expenditures that do not exceed the expenditure limit under KRS 121A.030(1)-the amount to which the slate agreed.

*(2) If the answer above is yes and the Committee proceeds to accept contributions in excess of the maximum threshold qualifying amount and if during the course of the general election the opposing slate does receive contributions at least equal to the minimum qualifying amount, would the Committee then be required to return contributions in excess of the maximum qualifying amount to the contributors?*

Only contributions that constitute qualifying contributions under KRS 121A.010(4) are eligible for matching funds. KRS 121A.060(1) specifically provides that contributions in excess of the maximum threshold qualifying amount do not constitute qualifying contributions and are not eligible for matching funds. If, prior to applying for a transfer of matching funds from the election campaign fund, a slate exceeds the maximum threshold qualifying amount, it may return excess contributions to contributors without penalty.

Therefore, as stated in your supplemental letter dated June 11, 1999, upon meeting all conditions precedent, including having an opposing slate that has raised the minimum threshold qualifying amount,

the Patton-Henry Committee would be eligible to receive matching fund transfers for qualifying contributions up to the maximum threshold qualifying amount, provided it refunded any excess contributions.

The overall scheme of the Public Financing Campaign Act "serves a compelling state interest in minimizing the role of fundraising and 'combat[ing] corruption by ending the money chase that has undermined the integrity of politicians and the faith of the public in the political process.'" Gable v. Patton, 142 F.3d 940, 947 (6<sup>th</sup> Cir. 1998), cert. denied, 119 S.Ct. 1112 (March 1, 1999). The implementation of the Act achieves this goal through voluntary participation in a program of public financing. Participating slates engage in a contract to limit their spending and follow specific fund raising procedures in exchange for public financing. However, if conditions precedent to receiving matching funds are not met, the public financing system is not designed to ensure an equal playing field between opposing slates of candidates. Gable, 142 F.3d at 948 ("The Buckley Court held that the 'interest in equalizing the relative financial resources of candidates ... is clearly not sufficient to justify ... infringement of fundamental First Amendment rights.'") Nevertheless, participating slates are held to the total voluntary spending limit to which they agreed, unless otherwise released by operation of statute.

If you have any further questions concerning this or any other transaction, please do not hesitate to contact the Registry staff.

Sincerely,

Rosemary F. Center

General Counsel

RFC/jh